

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

LIDIETH MOJICA,	.	Civil Action No. 1:15cv1110
	.	
Plaintiff,	.	
	.	
vs.	.	Alexandria, Virginia
	.	October 30, 2015
SWIFTSHIPS, LLC; KHURRAM SHAH,	.	10:02 a.m.
CALVIN LELEUX, and JEFFREY	.	
LELEUX,	.	
	.	
Defendants.	.	
	.	
.	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:	PETER C. COHEN, ESQ. Charlson Bredehoft Cohen & Brown, P.C. 11260 Roger Bacon Drive Suite 201 Reston, VA 20190
FOR THE DEFENDANTS:	ANDREW ZIMMITTI, ESQ. Manatt, Phelps & Phillips, LLP 1050 Connecticut Avenue, N.W. Washington, D.C. 20036
OFFICIAL COURT REPORTER:	ANNELIESE J. THOMSON, RDR, CRR U.S. District Court, Fifth Floor 401 Courthouse Square Alexandria, VA 22314 (703)299-8595

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 15-1110, Lidieth Mojica v.
3 Swiftships, LLC, et al. Will counsel please note their
4 appearances for the record.

5 MR. COHEN: Good morning, Your Honor. Peter Cohen
6 for the plaintiff.

7 THE COURT: Good morning.

8 MR. ZIMMITTI: Good morning again, Your Honor.
9 Andrew Zimmitti for the defendant Swiftships and the three
10 individual defendants.

11 THE COURT: And this is your first day in court after
12 I first swore you in.

13 MR. ZIMMITTI: Yes, it is. I'm privileged to have
14 you as not only the first judge in the Eastern District but
15 also my practice as a licensed attorney in Virginia. So thank
16 you very much.

17 THE COURT: Well, this is a difficult case for you to
18 have as your first one in front of this Court. I'm not
19 underestimating how difficult this might be. Aren't you and
20 Mr. Cohen talking about resolving this case?

21 MR. ZIMMITTI: Yes, Your Honor. We have and we
22 continue those discussions.

23 THE COURT: And you haven't yet reached an agreement?

24 MR. ZIMMITTI: Well, Your Honor, we, we have not yet.
25 This is a case in which the allegations, which are clear, are

1 contested very clearly on the basis of consent, and --

2 THE COURT: All right. Let's just talk a little bit
3 about that.

4 MR. ZIMMITTI: Yes.

5 THE COURT: When did the -- when do you believe the
6 relationship between the plaintiff and Mr. Shah ended?

7 MR. ZIMMITTI: Well, Your Honor, we are, we are aware
8 that it continued through the time that the plaintiff was
9 employed. As to when it specifically ended, it may have ended
10 at -- we're not completely clear, but it may have continued on
11 past her employment. We just -- I'm not prepared to say
12 exactly when that endpoint was because it did, it did continue,
13 the communications did continue through, through the term of
14 her employment.

15 THE COURT: Two-way communications?

16 MR. ZIMMITTI: Yes, Your Honor.

17 THE COURT: Do you have e-mails, in particular, do
18 you have any photographs sent by the plaintiff to your client
19 of a similar nature?

20 MR. ZIMMITTI: We have text messages, Your Honor,
21 some text messages that show the nature of the relationship was
22 consensual. We also -- which we have discussed. Photographs
23 were exchanged as well.

24 THE COURT: The same type of photographs?

25 MR. ZIMMITTI: Not precisely, but we believe that,

1 that they may have been, Your Honor, and we're in the process
2 of trying to ascertain precisely the full scope of, of those
3 communications, but one thing that does come through clearly
4 with respect to the communications that we know -- that we have
5 are that it was a welcomed exchange, that it was not in any way
6 deemed offensive, and that both parties understood, and I don't
7 like to -- I shouldn't use the term "appreciated," but
8 understood the nature of the communications and understood that
9 they were going back and forth in the connection of a
10 consensual relationship.

11 THE COURT: All right. Mr. Cohen, do you want to
12 address that issue a little bit?

13 MR. COHEN: Sure.

14 THE COURT: You can both see where I'm going. I'm
15 going to save you an appearance in court in terms of the
16 plaintiff's motion to strike, which has been briefed, and
17 there's no sense having you come back to court week after week.
18 So since you're here today, I'm just going to take care of that
19 and also give you the push to see if you can resolve this case.

20 So, Mr. Cohen, what do you say about the
21 consensual -- you can have a seat, sir -- the allegations that
22 your client was involved in a consensual relationship both
23 before and during her employment with Mr. Shah?

24 MR. COHEN: It's untrue.

25 THE COURT: Okay.

1 MR. COHEN: The evidence is not going to show that.
2 Ms. Mojica is adamant that there was no sexual relationship, no
3 romantic relationship.

4 THE COURT: At any point?

5 MR. COHEN: At any point. She will acknowledge and
6 she will explain in the case that she was confused on how to
7 handle this situation, as many women are in this kind of a
8 situation, that HR was of no support, and that, and that there
9 may have been times in this case where she acted in less than a
10 perfect manner, but the evidence is not going to show that
11 there's any romantic or sexual relationship.

12 This was a difficult relationship for her to be in.
13 He was the CEO of the company. This case is not just about
14 her. This is a hostile work environment. He engaged in this
15 kind of, shall I say, predatory conduct towards several women
16 in the workplace.

17 THE COURT: Have you talked with any of those other
18 women yet?

19 MR. COHEN: We have.

20 THE COURT: All right. I mean, again, the
21 allegations in this case are very strong. It's one of the
22 strongest complaints in terms of the detail of what was going
23 on is not normally appearing in a complaint, and for what it's
24 worth, and I think the defendant should consider this, the
25 docket clerk who was initially assigned this case and had to

1 upload the still photographs found them so objectionable that
2 we had to assign that docketing to another person.

3 I put that out there because a jury will be made up
4 of similar types of folks, and it's going to be very difficult
5 for the defendant, unless the defendant literally can hit the
6 home run by showing that there was a consensual sexual
7 relationship between the plaintiff and the defendant, this case
8 will have very, very difficult issues with the jury, and so for
9 those reasons, that's why this is the type of case that's
10 extremely, in my view, well positioned for early settlement.

11 Now, you've also alleged in the amended complaint,
12 Mr. Cohen, that at one point, Mr. Shah offered your client
13 money to walk away from this case?

14 MR. COHEN: That's correct.

15 THE COURT: I assume that was done verbally and not
16 in writing?

17 MR. COHEN: There was some e-mail exchange. It
18 wasn't from Mr. Shah, the CEO. It was from his brother, who
19 was the CFO of the company.

20 The evidence, I mean, I can proffer to the Court that
21 the evidence will likely show in this case that this was sort
22 of a method that the CEO, Mr. Shah, the alleged harasser, used
23 with respect to the women, that he used money in order to pay
24 for a variety of things which are described in the, in the
25 amended complaint.

1 THE COURT: How much did he offer your client, if you
2 know?

3 MR. COHEN: It was, I believe, a so-called
4 consultancy position for about \$100,000.

5 THE COURT: All right.

6 MR. COHEN: Or thereabout.

7 THE COURT: All right. Again, Judge Buchanan -- and
8 it's -- I want to assure both parties the computer assigns
9 cases. The fact that this case got the only two female judges
10 in the courthouse is ironic, but that's what you're stuck with.

11 But Judge Buchanan is a very, very astute mediator.
12 She's available to assist you. I also know that we have a lot
13 of very good private practitioners who are out there who are
14 offering mediation services.

15 You know, starting December 1, there are going to be
16 some new, interesting rules of discovery, especially this issue
17 about proportionality which I'm sure you are both aware of, but
18 we are going to become far more aggressive in reviewing the
19 merits of cases early on and trying to work with counsel in
20 making a wise assessment as to how much money should be
21 invested in transaction costs considering the potential
22 recovery, etc.

23 You ought to start really early on thinking about the
24 value of this case, and both sides, in my view, to best serve
25 your clients' interests, because this is a fee-shifting kind of

1 case as well, so defense has to keep that in mind, should
2 really start early and aggressively thinking about how to
3 resolve this case.

4 MR. COHEN: Your Honor, may I speak to settlement
5 first?

6 THE COURT: Yeah.

7 MR. COHEN: The parties have had discussions about
8 it, and I can represent to the Court without getting into
9 details that the parties were close, and a suggestion was made
10 to perhaps meet in the middle and call it a day, and that was
11 rejected. So --

12 THE COURT: Well, again, what I have found in my
13 experience as a mediator is it's really unfortunate when the
14 parties -- did you get close by yourselves, or did you have a
15 mediator helping you?

16 MR. COHEN: Ourselves.

17 THE COURT: That's fantastic. Then you should
18 immediately, rather than letting that dissipate, get before a
19 neutral, who can perhaps, you know, give you the extra push
20 that you need to reach the compromise.

21 So as I said, rather than starting to spend a lot of
22 money and time on discovery and all the depositions that will
23 be necessary -- I mean, the defense has to consider among other
24 things, because, you know, I've had Swiftships in another case,
25 it's a defense contractor. A company with that relationship

1 with the U.S. government does not want to have these types of
2 allegations being fleshed out.

3 And frankly, if the HR department is as unresponsive
4 as the complaint alleges it to be, then Swiftships needs to do
5 a lot of very careful self-evaluation, because if what
6 Mr. Cohen says in his complaint is accurate, there may be
7 potentially other cases out there. It needs to get cleaned up
8 if, in fact, this is really going on.

9 In any case, let me rule on the motions that you're
10 here for today just to clear things up. The actual motion
11 that's still technically here was the plaintiff's motion for
12 leave to file the attachments on a disc. Because of the way
13 that technology works in this court, I'm simply going to have
14 the disc kept in the vault, so it's part of the record of this
15 case, but we're not going to actually electronically merge it
16 into the case file.

17 The other exhibits we have permitted you to file
18 under seal, they've already been uploaded. As I said, we had
19 to get a different docket clerk to do it. So the motion,
20 docket No. 26, is granted, with the understanding that the
21 physical disc will just stay in the court.

22 I'm also going to address the plaintiff's motion to
23 strike certain denials. I'm going to deny that motion, and,
24 quite frankly, should you not settle and should the case go to
25 trial and should the evidence be that there wasn't a consensual

1 relationship or other basis to justify the documents, the
2 sending of those photographs and the videos, that the answer is
3 the way it is can come back to haunt. I have seen lawyers very
4 successfully use both complaints by plaintiffs or answers by
5 defendants as very effective ways of undercutting the
6 credibility of the position taken into the courtroom, and I
7 think lawyers have to think very carefully about what they put
8 in their pleadings because those are affirmative statements on
9 behalf of the client, and they can come back to haunt the
10 client at litigation.

11 So I'm going to deny that motion. It doesn't in any
12 respect prejudice the plaintiff. We'll leave it as it is, but
13 again, I recommend that you strongly think about resolving the
14 case. All right?

15 MR. COHEN: Thank you, Your Honor.

16 MR. ZIMMITTI: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (Which were all the proceedings
19 had at this time.)
20

21 CERTIFICATE OF THE REPORTER

22 I certify that the foregoing is a correct transcript of
23 the record of proceedings in the above-entitled matter.
24

25 /s/

Anneliese J. Thomson